



ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OAR-2021-0566; FRL-9711-01-OAR]

April 2022 Denial of Petitions for Small Refinery Exemptions Under the Renewable Fuel Standard Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Denial of petitions.

SUMMARY: The Environmental Protection Agency (EPA) is providing notice of its final action entitled April 2022 Denial of Petitions for RFS Small Refinery Exemptions (“SRE Denial”) in which EPA denied 36 small refinery exemption (SRE) petitions under the Renewable Fuel Standard (RFS) program. EPA is providing this notice for public awareness of and the basis for EPA’s decision issued on April 7, 2022.

DATES: [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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SUPPLEMENTARY INFORMATION:

I. Background

The Clean Air Act (CAA) provides that a small refinery¹ may at any time petition EPA for an extension of the exemption from the obligations of the RFS program for the reason of disproportionate economic hardship (DEH).² In evaluating such petitions, the EPA Administrator, in consultation with the Secretary of Energy, will consider the findings of a Department of Energy (DOE) study and other economic factors.³

¹ The CAA defines a small refinery as “a refinery for which the average aggregate daily crude oil throughput for a calendar year ... does not exceed 75,000 barrels.” CAA section 211(o)(1)(K).

² CAA section 211(o)(9)(B)(i).

³ CAA section 211(o)(9)(B)(ii).

II. Decision

In the SRE Denial,⁴ we conducted an extensive analysis and review of information provided to EPA by small refineries in their SRE petitions and in the comments submitted in response to the Proposed Denial.⁵ We sought comment on all aspects of the Proposed Denial, including on our conclusions that the CAA requires small refineries to demonstrate that DEH is caused by compliance with the RFS program. We also sought comment on our economic analyses and conclusion that no small refineries face disproportionate costs of compliance due to the RFS program, no economic hardship, and, therefore, no DEH caused by RFS compliance. We requested additional data that would show the relationship between RFS compliance costs and the price of transportation fuel blendstocks. We also sought comment on our proposed change in approach to SRE eligibility based on receipt of the original statutory exemption, and our proposed decision to deny all pending SRE petitions based on the proportional nature of the RFS requirements and our findings regarding RIN cost passthrough. We considered all the comments received and have responded to them in the SRE Denial and its corresponding appendices.

In the SRE Denial, we find that all refineries face the same costs to acquire RINs regardless of whether the RINs are created through the act of blending renewable fuels or are purchased on the open market. This happens because the market price for these fuels increases to reflect the cost of the RIN, much as it would increase in response to higher crude prices. In other words, this increased price for gasoline and diesel fuel allows obligated parties to recover their RIN costs through the market price of the fuel they produce. Because the market behaves this way for all parties subject to the RFS program, there is no disproportionate cost to any party, including small refineries, and no hardship given that the costs are recovered. As a result, we conclude that small refineries do not face DEH. Given this conclusion and the other reasons

⁴ “April 2022 Denial of Petitions for RFS Small Refinery Exemptions,” EPA-420-R-22-005, April 2022.

⁵ “Proposed RFS Small Refinery Exemption Decision,” EPA-420-D-21-001, December 2021 (hereinafter the “Proposed Denial”). 86 FR 70999 (December 14, 2021).

described in the SRE Denial, we have denied 36 SRE petitions by finding the petitioning refineries do not face DEH caused by compliance with their RFS obligations.

III. Judicial Review

Section 307(b)(1) of the CAA governs judicial review of final actions by the EPA. This section provides, in part, that petitions for review must be filed in the United States Court of Appeals for the District of Columbia Circuit: (i) when the agency action consists of “nationally applicable...final actions taken by the Administrator,” or (ii) when such action is locally or regionally applicable, but “such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination.” For locally or regionally applicable final actions, the CAA reserves to the EPA complete discretion whether to invoke the exception in (ii) described in the preceding sentence.

This final action is “nationally applicable” within the meaning of CAA section 307(b)(1). In the alternative, to the extent a court finds this final action to be locally or regionally applicable, the Administrator is exercising the complete discretion afforded to him under the CAA to make and publish a finding that this action is based on a determination of “nationwide scope or effect” within the meaning of CAA section 307(b)(1).⁶ This final action denies petitions for exemptions from the RFS program for over 30 small refineries across the country and applies to small refineries located within 18 states in 7 of the 10 EPA regions and in 8 different Federal judicial circuits.⁷ This final action is based on EPA’s revised interpretation of the relevant CAA provisions and the RIN discount and RIN cost passthrough principles that are applicable to all small refineries no matter the location or market in which they operate. For these reasons, this

⁶ In deciding whether to invoke the exception by making and publishing a finding that this final action is based on a determination of nationwide scope or effect, the Administrator has also taken into account a number of policy considerations, including his judgment balancing the benefit of obtaining the D.C. Circuit’s authoritative centralized review versus allowing development of the issue in other contexts and the best use of Agency resources.

⁷ In the report on the 1977 Amendments that revised section 307(b)(1) of the CAA, Congress noted that the Administrator’s determination that the “nationwide scope or effect” exception applies would be appropriate for any action that has a scope or effect beyond a single judicial circuit. See H.R. Rep. No. 95–294 at 323, 324, reprinted in 1977 U.S.C.C.A.N. 1402–03.

final action is nationally applicable or, alternatively, the Administrator is exercising the complete discretion afforded to him by the CAA and hereby finds that this final action is based on a determination of nationwide scope or effect for purposes of CAA section 307(b)(1) and is hereby publishing that finding in the *Federal Register*.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the District of Columbia Circuit by **[INSERT DATE 60 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Joseph Goffman,

Principal Deputy Assistant Administrator, Office of Air and Radiation.

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